

1 We've got a telephone set up here. We can
2 take testimony on the telephone. We're not
3 going to drag people in here unnecessarily.
4 But when it comes to something like this, if
5 just a simple phone call to the clerk of the
6 Benton County Superior Court, giving him our
7 case number and saying, you know, "What do you
8 have on file about that? I'm representing
9 this person who supposedly was before judge
10 so-and-so," or whatever. I mean, it's not
11 that big of a deal to try and check that out.

12 MR. LYON: Your Honor, I can't
13 argue with hindsight, but I must admit that
14 it's never occurred to me to check this. I
15 asked my client about it. He told me he was
16 found not guilty of the violation.

17 JUDGE SIPPEL: Okay. I'm not
18 saying he's lying. I didn't say that either.
19 I mean, I'm not making any ruling here about
20 it. I'm just saying that your argument is
21 that this is only half the story with this
22 document. Lie any other rule of evidence, if

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1 the government puts in a half story, you're
2 entitled to put in the rest of the story so
3 that it's a full story. You're entitled to do
4 that. But there's nothing based on what
5 you've argued thus far -- and the government
6 does have the burden of proof, which limits
7 them from putting this in. Now, in light of
8 the fact that it is half the story and in
9 light of the fact that your client is going to
10 testify about it, you know, it could be
11 considered in findings and, you know, all,
12 some, or nothing.

13 But I'm just putting a red flag
14 out here. I'm saying if your client is lying
15 to you and you're putting him on the stand and
16 you should have checked on something to find
17 out if he's lying to you, not for the purpose
18 of testing your client's credibility but for
19 the purpose of he might be mistaken. He might
20 think that he got a clear bill of health from
21 the court, but it might not quite be that way.
22 So I'm going to receive this into evidence at

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1 this point for all purposes. On the other
2 hand, if the government is holding back
3 evidence, they've got a problem, too. If they
4 know more about this than they're telling me
5 then they've got a problem if it comes out.

6 MS. LANCASTER: Your Honor, I can
7 assure you that this is the file that we were
8 given --

9 JUDGE SIPPEL: I believe you. I
10 believe you.

11 MR. LYON: I believe them, as
12 well, your Honor.

13 JUDGE SIPPEL: But it's a half
14 file, you know. And I think that everybody is
15 telling the truth about it, but I don't know.
16 And to have a witness come in and, in effect,
17 destroy the use of this document based on his
18 recollection of a hearing and having no record
19 of even, you know, a one-page order from some
20 judge out there in Benton County addressing it
21 is troublesome to me because he might not
22 understand what happened in that hearing, if

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1 there was such a thing.

2 So I'm being very honest with you,
3 I don't know who's winning or losing on this
4 particular ruling, but this document is coming
5 in for all purposes. But it obviously has
6 limitations, so what weight I would give it is
7 up in the air.

8 MR. LYON: Thank you, your Honor.

9 JUDGE SIPPEL: You bet. Moving on
10 to Exhibit Number 5.

11 MR. KNOWLES-KELLETT: Exhibit
12 Number 5, your Honor, is a one-page document.
13 It was referred to in the Order to Show Cause
14 in this matter. It was referenced in a
15 footnote. It's the same document as appeared
16 on page 41 in the prior exhibit. It's
17 separated out for the convenience of
18 discussing it with witnesses.

19 (Whereupon, the above-referred to
20 document was marked as Government
21 Exhibit No. 5 for identification.)

22 JUDGE SIPPEL: Oh, so it's a

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1 repetitious --

2 MR. KNOWLES-KELLETT: Yes.

3 JUDGE SIPPEL: -- document but for
4 convenience. It's one page, so, for
5 convenience, you want it in as a separate
6 numbered document?

7 MR. KNOWLES-KELLETT: Yes, your
8 Honor.

9 JUDGE SIPPEL: Any objection to
10 that?

11 MR. LYON: As long as it's limited
12 in the same manner as the document in Exhibit
13 4.

14 JUDGE SIPPEL: Well, it will be.
15 I'm sure you'll remind me if . . . so Exhibit
16 5 is in. It's identified and received as
17 Exhibit 5.

18 (Whereupon, Government Exhibit No.
19 5 was received into evidence.)

20 MR. KNOWLES-KELLETT: Exhibit
21 Number 6 is the written direct testimony of
22 John Schurman. It's a four-page document.

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1 I'd like to move it into evidence.

2 (Whereupon, the above-referred to
3 document was marked as Government
4 Exhibit No. 6 for identification.)

5 JUDGE SIPPEL: Any objection?

6 MR. LYON: If you could give me a
7 minute, your Honor. I'm torn, your Honor,
8 just because there's a lot of what I think is
9 inappropriate opinion in here. But given that
10 the witness will be presented for cross
11 examination, I have no objection.

12 JUDGE SIPPEL: All right. So
13 there's basically no objection. It's received
14 in evidence as Enforcement Bureau Exhibit
15 Number 6.

16 (Whereupon, Government Exhibit No.
17 6 was received into evidence.)

18 MR. KNOWLES-KELLETT: Exhibit
19 Number 7, your Honor, is a one-page document.
20 It's a warning that Mr. Schurman gave to
21 members of the kids' club that he's president
22 of, and I'd like to move it into evidence.

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1 (Whereupon, the above-referred to
2 document was marked as Government
3 Exhibit No. 7 for identification.)

4 MR. LYON: Your Honor, I have no
5 objection to its receipt for the purpose that
6 this is the warning he gave. I do object to
7 the document to the extent that it would be
8 admitted for the truth of the matter as
9 asserted.

10 JUDGE SIPPEL: I will receive it
11 under that restriction.

12 (Whereupon, Government Exhibit No.
13 7 was received into evidence.)

14 MR. LYON: Thank you, your Honor.

15 MR. KNOWLES-KELLETT: Exhibit
16 Number 8, your Honor, is a two-page letter
17 written by the treasurer of Mr. Schurman's
18 club dated --

19 JUDGE SIPPEL: This is Exhibit 8
20 now?

21 MR. KNOWLES-KELLETT: Yes. Mr.
22 David Condon, the senator. It's the complaint

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1 that gave rise to the HDO. I'd like to move
2 it into evidence.

3 (Whereupon, the above-referred to
4 document was marked as Government
5 Exhibit No. 8 for identification.)

6 MR. LYON: Your Honor, I have to
7 object to this. It's hearsay. It lacks
8 authentication. The witness who wrote it has
9 not been tendered to authenticate it or to
10 sponsor it. While it may be interesting that
11 we're here because a letter was sent to
12 Senator Cantwell, the fact is that it's not
13 relevant or material to your determination.
14 And certainly, given that the letter contains
15 hearsay allegations that are best adjudicated
16 based upon the official records, I object to
17 this document.

18 MR. KNOWLES-KELLETT: Your Honor,
19 we'd like it not for the truth of the matter
20 asserted but to corroborate Mr. Schurman's
21 testimony that the club was upset about Mr.
22 Titus operating in the Seattle area.

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1 MR. LYON: Your Honor, I don't
2 think that is an appropriate document to
3 authenticate it. I will stipulate that Mr.
4 Schurman -- I'm sorry, what is his name again?

5 JUDGE SIPPEL: This David Condon?

6 MR. LYON: I'll stipulate that the
7 club has a concern. But, otherwise, I don't
8 see it as relevant or material to this case.
9 And, certainly, it's improper given that Mr.
10 Condon isn't testifying.

11 MS. LANCASTER: Your Honor, if I
12 might interject, it was the complaint letter
13 that started this whole investigation by the
14 Commission. And at least for that purpose, it
15 should be admitted as being what notice the
16 Commission received of Mr. Titus.

17 MR. LYON: Your Honor, I don't
18 understand why that's relevant at all. Your
19 Honor, it's almost an indictment starts the
20 criminal trial, but an indictment is never
21 admitted into evidence because it's
22 prejudicial and there's no way to cross

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1 examine one. And this doesn't even rise to
2 the level of an official document. It's a
3 letter someone wrote to their senator
4 complaining about Mr. Titus.

5 MS. LANCASTER: Well, it's an
6 official FCC document, a copy of which was
7 received by the FCC and it made the FCC
8 instigate an investigation of Mr. Titus.

9 MR. LYON: Well, I guess --

10 MS. LANCASTER: It's just part of
11 the record, and we would ask that it just be
12 admitted as such.

13 MR. LYON: I get that. From that
14 logic, your Honor, and excuse the analogy, but
15 if I sent a roll of toilet paper to the FCC it
16 would become an official document. It's just
17 not a reason why it should be admitted.

18 MS. LANCASTER: The FCC would not
19 act if it just received a roll of toilet
20 paper, your Honor.

21 JUDGE SIPPEL: They'd probably
22 send it back to you. All right. Let me

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1 approach it this way. While you're talking
2 I'm reading, and the only thing that gives me
3 concern here from the standpoint of prejudice
4 would seem to be the paragraph at the bottom
5 of page one, "Normally, amateur radio provides
6 a very safe place for children," etcetera,
7 etcetera. I'm inclined to receive the
8 document but strike that because, by doing
9 that, the document meets all the arguments
10 that Ms. Lancaster made about getting, you
11 know -- certainly, there is relevance to a
12 document which starts the story, so to speak.
13 Background. And everything else in there it
14 seems to me is just, I mean it really doesn't
15 come to the, it doesn't provide substantiative
16 evidence. But that one paragraph here does.

17 MR. LYON: Your Honor, if we can
18 admit it only for the purpose that a complaint
19 was made and not for the truth of the matter
20 as asserted, then it obviates most of my
21 objection.

22 JUDGE SIPPEL: All right. We'll

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1 do that. It's received to prove a complaint
2 was made with the Commission. Well, not
3 actually with the Commission, but a complaint
4 was made about Mr. Titus.

5 (Whereupon, Government Exhibit No.
6 8 was received into evidence.)

7 MR. LYON: Your Honor, can I
8 inquire of Bureau counsel whether the
9 Commission received any correspondence from
10 Senator Cantwell in this matter?

11 JUDGE SIPPEL: Well, that's a
12 discovery item. We're not going to do that
13 now. I mean, you had time to discover this or
14 seek to discover it. I don't want to get into
15 that now. It's just a waste of time. But I'm
16 not going to make any findings on this
17 document, other than the fact that, you know,
18 on that particular day, a complaint was made
19 to the Senator about Mr. Titus and asking that
20 she do something with the FCC about it.
21 That's all it shows. I mean, you may come up
22 with some other aspect of this in connection

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1 with those findings, and I'll consider that.
2 But, in general, this is how I'm looking at
3 it.

4 Okay. So that's my ruling. It's
5 received in evidence to prove that a complaint
6 was made to the Senator about Mr. Titus.
7 Exhibit 9?

8 MR. KNOWLES-KELLETT: Exhibit 9,
9 your Honor, is a one-page document. It's the
10 testimony, written testimony of Chris Imlay,
11 who is counsel for the American Radio Relay
12 League, or ARRL. We move it into evidence,
13 your Honor.

14 (Whereupon, the above-referred to
15 document was marked as Government
16 Exhibit No. 9 for identification.)

17 JUDGE SIPPEL: Any objection?

18 MR. LYON: No objection to the
19 exhibit.

20 JUDGE SIPPEL: Okay. It's
21 identified and received as Exhibit 9 for the
22 Bureau.

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1 (Whereupon, Government Exhibit No.
2 9 was received into evidence.)

3 JUDGE SIPPEL: Next exhibit, ten?

4 MR. KNOWLES-KELLETT: Exhibit 10
5 is a 24-page document, your Honor. It has to
6 do with there was an issue in a pre-
7 conference, your Honor, the statement in the
8 HDO that amateur is particularly attractive to
9 children. Both you and Mr. Titus' former
10 counsel questioned that, and this is offered
11 as notice that amateur radio is attractive to
12 children.

13 (Whereupon, the above-referred to
14 document was marked as Government
15 Exhibit No. 10 for
16 identification.)

17 JUDGE SIPPEL: Any objections?

18 MR. LYON: Your Honor, I hate to
19 be constrained by actions of former counsel.
20 I will stipulate that there are children
21 involved in amateur radio, just like there are
22 children involved in just about every other

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1 human endeavor. I don't know whether Exhibits
2 10 and 11 and 12 and 13 are necessarily
3 appropriate. There's no way to cross examine
4 on those exhibits. They're hearsay. Even if
5 Mr. Imlay were called, he couldn't verify the
6 truth in the matters asserted within those
7 exhibits. I think that my stipulation that
8 there are children involved in amateur radio
9 would suffice. And, certainly, Mr. Titus can
10 testify to that because he was 15 when he
11 first got his license.

12 But I think we're burdening the
13 record with ultimately what's going to be, it
14 looks like several hundred pages of documents.
15 And I doubt you really want to make findings,
16 detailed findings on those documents.

17 MR. KNOWLES-KELLETT: I agree,
18 your Honor, that detailed findings will not be
19 necessary as to these documents. I think we
20 can agree that the remainder of the
21 Commission's exhibits, 10, 11, 12, and 13, all
22 fall into the same category, except for the

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1 testimony of Sarah Walker from the Boy Scouts
2 who sponsors 13. Chris Imlay, counsel for the
3 League, sponsors 10 and 11. And all of it,
4 your Honor, doesn't come in for the purpose
5 that there was, in particular, a gathering on,
6 you know, a particular day of 40 kids.

7 Cumulatively, you know, the
8 reliability without the ability to cross
9 examine, we're not saying that 40 kids got
10 together on such-and-such a day or that
11 necessarily in 1953 this many Boy Scouts got
12 radio merit badges. In some, all of the
13 exhibits go to the fact that it's attractive
14 to children. And because of the --

15 JUDGE SIPPEL: He's willing to
16 concede that.

17 MR. KNOWLES-KELLETT: He's willing
18 to concede that they're involved in radio, not
19 that it's attractive to children.

20 JUDGE SIPPEL: I'm sorry. You
21 tell me exactly what you mean.

22 MR. LYON: My stipulation is that,

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1 my offer of stipulation is that minors are
2 involved in amateur radio. I think if it
3 wasn't attractive to them they wouldn't be
4 involved. So, okay, we want to say that
5 minors, as well as adults, are attracted to
6 amateur radio, I have no problem. I don't
7 know that it's particularly more attractive to
8 children than adults, and, certainly, these
9 documents don't show that oneway or another.

10 MR. KNOWLES-KELLETT: We're not
11 arguing it's more attractive to children than
12 adults, your Honor. However, based on the
13 arguments of Mr. Titus' former counsel, we
14 went to a lot of effort to get these
15 documents, and we think for the limited
16 purpose for which they're offered they're the
17 best evidence that it's attractive to
18 children.

19 JUDGE SIPPEL: Well, just based on
20 what we've discussed here today, I can pretty
21 much find that it's attractive to children.

22 MS. LANCASTER: Well, your Honor,

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1 these documents also show different types of
2 activities that children participate in in ham
3 radio, and that has some probative value in
4 and of itself. Other than just a general
5 they're attractive to children, it shows the
6 types of things that they do.

7 MR. LYON: But, your Honor, then I
8 can't cross it. I can't cross examine for
9 that purpose.

10 JUDGE SIPPEL: Well, I'm not even
11 going to get there yet. How does that help me
12 or the record? I don't need to know. I don't
13 have to be that refined. I mean, Exhibit 10
14 interests me, does it give any statistics in
15 here? This is a traditional type of hearsay
16 exception from basically a trade association,
17 again, coming in for a limited purpose, as
18 background primarily.

19 MR. KNOWLES-KELLETT: With respect
20 to the letter from Chris Imlay, Mr. Lyon
21 decided not to cross examine him. So it's
22 not, our discussion really has to do with the

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1 remainder of -- the front letter is just a
2 cover letter relating to the other matters.

3 JUDGE SIPPEL: Well, it says here,
4 "There has always been a special interest
5 involving youth and amateur radio. It is
6 perceived to be a healthy educational
7 advocacy that leads in many cases to career
8 choices." That's apparently not a matter of
9 argument. And then you take that he's willing
10 to stipulate basically that it's attractive to
11 youth. Still, I'll come to the conclusion as
12 to either what percentage of the users or even
13 a gross number and then how are you going to
14 define, you know, young people, adolescents,
15 or whatever you're talking about? But as a
16 general proposition, I will accept the fact
17 that, like any other technology, that a radio,
18 a ham radio, if I can call it that, or amateur
19 radio is going to be attractive to a certain
20 element of the young community, people who
21 have that aptitude.

22 MR. LYON: Your Honor, perhaps as

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1 a compromise we could admit the letter from
2 Mr. Imlay, which I think says everything that
3 the Bureau wants to say, without burdening the
4 record with these reprints of various
5 publications or newsletters or whatever.

6 JUDGE SIPPEL: Well, what I'm
7 trying to do is I'm just trying to keep the
8 record in a controlled context. And I think -
9 -

10 MR. LYON: Your Honor --

11 JUDGE SIPPEL: Let me finish what
12 I'm saying. I think Exhibit 10 from Mr.
13 Imlay, which is a very lawyer-like letter
14 explaining, you know, trying to give an
15 explanation as to what this whole amateur
16 radio activity is about. He does represent an
17 association. And, also, he's got two examples
18 that he's attached to it. I don't think that,
19 unless there's other evidence, unless Mr.
20 Titus comes in and testifies what you find to
21 be some outrageous statements and you want to
22 use the materials in 11, 12, and 13 to cross

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1 examine him with to show his inconsistencies,
2 you know, that's fine. But I don't see why I
3 need to go beyond Exhibit 10. Plus, you know,
4 Mr. Lyon's generous concession here about,
5 basically, the point you're trying to prove.

6 MS. LANCASTER: Your Honor,
7 somewhere in this record is a list from the
8 Boy Scouts, and you mentioned something about
9 whether there was any cumulative evidence
10 about the number of licenses or anything.
11 There is some evidence in here. I'm not
12 finding it quickly.

13 MR. LYON: It's at the end. If I
14 may help, it's at the very end of 13.

15 MS. LANCASTER: Okay. We're not
16 to 13 yet. Okay. I'll hold that argument,
17 your Honor.

18 JUDGE SIPPEL: Okay. Let's
19 accomplish what we can. Bureau Exhibit 10,
20 there is a hearsay objection. It's been
21 tempered by Mr. Lyon. But in any event, I'm
22 going to receive it under the hearsay

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1 exception for, you know, trade association
2 reports and data, again for limited purposes
3 which are peripheral to the case, but it's
4 relevant. It is relevant, and it's hearsay,
5 and there's an exception for it. So Exhibit
6 10 is received into evidence. The reporter
7 has the number of pages? There's a total of
8 24 pages. So it's identified today, and it's
9 received today.

10 (Whereupon, Government Exhibit No.
11 10 was received into evidence.)

12 JUDGE SIPPEL: Now we're going
13 into number 11. Tell me what the number of
14 pages are. You've got them marked so . . .

15 MR. KNOWLES-KELLETT: Yes. It's
16 216 pages, your Honor.

17 (Whereupon, the above-referred to
18 document was marked as Government
19 Exhibit No. 11 for
20 identification.)

21 JUDGE SIPPEL: Now, are you going
22 to move that into evidence at this time?

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1 MR. KNOWLES-KELLETT: Yes, your
2 Honor.

3 JUDGE SIPPEL: In its entirety?

4 MR. KNOWLES-KELLETT: Yes, your
5 Honor.

6 JUDGE SIPPEL: Objections?

7 MR. LYON: Cumulative and hearsay.

8 JUDGE SIPPEL: Okay. You want to
9 respond to that?

10 MR. KNOWLES-KELLETT: Your Honor,
11 this falls into the same category. It's more
12 of Christopher Imlay's records regarding the
13 involvement of youth in radio, and we think
14 that's it's --

15 JUDGE SIPPEL: I can't hear you.

16 MR. KNOWLES-KELLETT: It's more of
17 Christopher Imlay's records from the League
18 regarding the involvement of youth in radio.

19 JUDGE SIPPEL: All right. The
20 objection is that it's hearsay, cumulative,
21 and I find it also overly burdensome of the
22 record. And I am going to deny it. I'm going

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1 to reject it at this time, subject to your
2 right to use it, excerpts of it, for cross
3 examination, but they'll have to be identified
4 as a cross examination exhibit, you know, with
5 the appropriate copies going to the reporter
6 and myself and, of course, to Mr. Lyon. Any
7 question on that?

8 MS. LANCASTER: Yes, I have one
9 question. We can only use it for cross? Can
10 we use it on direct examination, also, your
11 Honor?

12 JUDGE SIPPEL: You mean excerpts?

13 MS. LANCASTER: Yes, sir.

14 JUDGE SIPPEL: Redirect. I don't
15 see why direct examination --

16 MS. LANCASTER: Well, because we
17 have witnesses who may have knowledge of some
18 of these types of activities or these specific
19 activities even, and we'd like to be able to
20 ask them about it.

21 JUDGE SIPPEL: If you ask them
22 about it and they can testify to it, why do we

1 need a document?

2 MS. LANCASTER: I don't know --

3 JUDGE SIPPEL: You need it to
4 refresh their recollection?

5 MS. LANCASTER: Maybe. I just
6 want it open that we may use it if we need to
7 use it.

8 MR. LYON: Your Honor, as far as I
9 understand the rules of evidence, counsel can
10 use an umbrella to refresh the witness'
11 recollection so --

12 JUDGE SIPPEL: Yes, we don't even
13 have to receive it into evidence for you to
14 put this in front of a witness who couldn't
15 recall about a jamboree, and she says, "Oh,
16 yes, now I remember the jamboree." I mean, we
17 don't have to go any further with it unless
18 there's an objection or there's some other
19 aspect to it.

20 MS. LANCASTER: My comment was
21 only made, your Honor, because you could use
22 it on cross only when I wanted --

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